

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

TRUSTEES OF THE DISTRICT
COUNCIL 9 PAINTING INDUSTRY :
INSURANCE AND ANNUITY FUNDS,

Plaintiff, :

ANSWER

-against- : **07 CIV 8620 (Robinson, J.)**

SERGI'S IMAGES, INC., :
Defendant.

X

1. The Defendant, Sergi's Images, Inc. ("Sergi's"), by its attorneys, Meltzer, Lippe, Goldstein & Breitstone, LLP, as and for its Answer to the Subject Complaint, sets forth the following: "Employer" is intended to mean Sergi's.
2. Denies the allegations of Paragraph 10 of the Subject Complaint.
3. Neither admits nor denies the allegations of Paragraph 11 of the Subject Complaint, and instead respectfully refers the Court to the document(s) in question, the terms of which speak for themselves.
4. Denies the allegations of Paragraph 12 of the Subject Complaint.
5. Neither admits nor denies the allegations of Paragraph 13 of the Subject Complaint, and instead respectfully refers the Court to the document(s) in question, the terms of which speak for themselves.
6. Denies the allegations of Paragraphs 14 and 15 of the Subject Complaint.
7. Neither admits nor denies the allegations of Paragraph 16 of the Subject Complaint, and instead respectfully refers the Court to the document(s) in question, the terms of which speak for themselves.

8. Denies the allegations of Paragraph 17 of the Subject Complaint.
9. With respect to the allegations of Paragraph 18 of the Subject Complaint, Defendant repeats and realleges each and every response set forth herein to each paragraph set forth therein as though now set forth and repeated at length.
10. Neither admits nor denies the allegations of Paragraphs 19-22 of the Subject Complaint, as they are not allegations of fact, but rather constitute legal conclusions.
11. Denies the allegations of Paragraphs 23 -25 of the Subject Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

12. Accord and Satisfaction.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

17. Estoppel.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

18. In the absence of a written agreement, payments may not be lawfully made to an employee benefit fund.

Wherefore, it is respectfully requested that the Subject Complaint be dismissed in its entirety and that the Defendant be awarded such other and further relief as this Court deems just and proper.

Dated: Mineola, New York
November 7, 2007

Meltzer, Lippe, Goldstein & Breitstone, LLP

By

Richard M. Howard (RMH-2932)
Attorneys for Defendant
190 Willis Avenue
Mineola, New York 11501
(516) 747-0300

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE DISTRICT COUNCIL 9
PAINTING INDUSTRY INSURANCE AND
ANNUITY FUNDS,

Plaintiff

against-

SERGI'S IMAGES, INC.

Defendant.

**AFFIDAVIT OF
SERVICE**

Docket No. 07 CV 8620
(Stanton, J.)

X

STATE OF NEW YORK}

} ss:

COUNTY OF NASSAU}

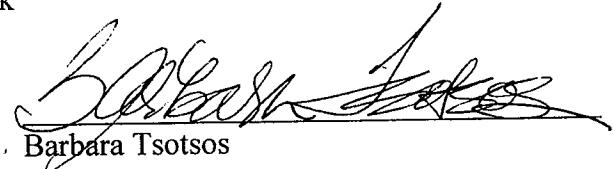
Barbara Tsotsos, being duly sworn, deposes and says:

That Deponent is not a party to this action, is over 18 years of age and resides at Merrick, New York.

That on the 8th day of November 2007 Deponent served an Answer and Defendants' First Set of Interrogatories and Document Requests upon:

Dana Henke, Esq.
Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC
258 Saw Mill River Road
Elmsford, NY 10523

by depositing a true copy of same enclosed in a post-paid, properly addressed wrapper, in a post-office/official depository under the exclusive care and custody of the United States Postal Service within the State of New York



Barbara Tsotsos

Sworn to before me this
8th day of November, 2007



Notary Public

CARMELO GRIMALDI
Notary Public, State of New York
No. 4965188
Qualified in Nassau County
Commission Expires April 16, 2010